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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

BRADLEY WADE MARTIN,

Defendant and Appellant.

A122417

**(Contra Costa County
Super. Ct. No. 05-071528-4)**

Defendant Bradley Wade Martin (appellant) was convicted by jury trial of unlawfully taking or driving a vehicle (Veh. Code, § 10851, subd. (a)) and receiving a stolen vehicle (Pen. Code, § 496d). The court suspended execution of a three-year state prison sentence, placed appellant on probation subject to various conditions, and imposed a 365-day jail term with credit for time served. Counsel has advised that examination of the record reveals no arguable issues. (*Anders v. California* (1967) 386 U.S. 738; *People v. Wende* (1979) 25 Cal.3d 436.) Counsel has also advised appellant that he may personally file a supplemental opening brief, but appellant has not done so.

BACKGROUND

During jury selection, defense counsel made a *Wheeler* motion (*People v. Wheeler* (1978) 22 Cal.3d 258) after the prosecution exercised its fifth peremptory challenge of Prospective Juror No. 48. The trial court properly denied the motion after concluding the prosecutor had a race neutral reason for the challenge.

Facts

At about 8:30 p.m. on July 11, 2007, Jesse Wilferd drove his 1992 Acura Vigor home after work and parked it on the street in front of his Concord home. He locked the car, closed the windows and took the car keys with him when he entered his house. The next morning Wilferd discovered his car missing and notified police that it had been stolen. Wilferd did not give anyone permission to drive or take his car.

On the evening of July 12, 2007, Pleasant Hill Police Detective Geis observed a white Acura being driven in Concord. The Acura drew her attention because it is the type of vehicle that is frequently stolen. As Geis followed the Acura in an attempt to record its license plate number, the Acura made a quick lane change, turned into a gas station and then sped onto a parkway. Before Geis lost sight of the Acura, she determined that the only person in it was the driver, a White male. Shortly before 7:00 p.m., Geis's partner broadcast what had occurred, describing the Acura as "a 90s, '02, early 2002, white two-door."

At about the same time, Eileen Cunningham was sweeping the driveway of her Martinez home when she heard a car "screeching," saw it approach "on the wrong side of the road, almost up on the sidewalk," and speed up the street. At trial, Cunningham said she was "110 percent" confident that appellant was the driver of the car. Although she originally described the car as a Honda Accord, she identified a photograph of Wilferd's car as the car she saw on the night of July 12, 2007. Shortly thereafter, Cunningham saw appellant walking past her house and yelled to him, "You need to slow it down." When appellant, who was talking on a cell phone, did not respond, Cunningham walked up to him and again told him not to drive fast in a neighborhood with small children. Appellant apologized and told her he ran out of gas and was calling a friend for a ride. Cunningham said appellant wore a black zip-up hooded sweatshirt, baseball cap, jeans, white undershirt and tennis shoes. She said he appeared to be nervous and sweating.

Cunningham then called 911 and reported that she had just confronted a man who she believed had stolen and abandoned a white Honda.¹

Detective Geis received the dispatch and responded to Cunningham's residence. Geis determined that the car Cunningham described was the white Acura she had previously seen.

At about 6:54 p.m. on July 12, 2007, Pleasant Hill Police Officer Priebe heard the dispatch from Detectives Geis and Kristic that they were in pursuit of a white Acura that was trying to evade them. Ten to 15 minutes later, Priebe responded to the location where the car was abandoned and spoke to Geis and Kristic. Another officer told him a neighbor had seen the suspect flee from the car. The suspect was described as a White male with a thin face, thin goatee, black hat, white shirt, black jacket, and jeans.

At 7:23 p.m., Priebe saw a person matching that description seated in the back seat of a Mitsubishi being driven about three-quarters of a mile from the abandoned Acura. At trial Priebe identified that person as appellant. Priebe described appellant as nervous and sweating. As Priebe followed the Mitsubishi, he noted a crack in its windshield and radioed for backup to assist with a traffic stop. Priebe observed the car make a last minute lane change and what appeared to be appellant and the other passenger in the car looking behind them in Priebe's direction, suggesting to Priebe that the car was attempting to evade him. When the car turned into a small neighborhood, Priebe activated his lights and siren and pulled the car over. The car's occupants were the driver and owner (Thomas Daly), the front passenger (Kareen Pachonian), and the rear passenger (appellant). Daly and appellant appeared more nervous than Pachonian. A search of the car's trunk revealed a duffel bag containing various tools. After backup officers arrived, Priebe ordered the car's occupants out of the car, handcuffed appellant and searched him for weapons. No weapons or burglar tools were found on appellant.

¹ Prior to trial the court properly overruled appellant's in limine objection on the grounds of hearsay and "cumulative" to the prosecutor's request to play the 911 tape for the jury.

Thereafter, Cunningham participated in an in-field lineup of appellant and the two other occupants of the car. After standing in front of appellant and viewing him “face-to-face,” Cunningham identified him as the suspect she had seen fleeing from the stolen Acura.

The Defense

Appellant’s former girlfriend, Kasey Chaney, testified that appellant came to her house after dinner on July 11, 2007, and spent the night with her. Appellant left her home at about 2:30 p.m. the next day.

Appellant’s mother, Kimberly Lantry, testified that she believed appellant was at Chaney’s house when she talked with him by phone on July 11, 2007. At about 6:00 or 6:15 p.m. the next day, Lantry talked with him by phone while he was at a bingo parlor. About 20 or 30 minutes later, Lantry received a call from Chaney saying that appellant had been pulled over.

Pleasant Hill Police Detective Guidi processed the recovered Acura for fingerprints. He was unable to match any of the prints lifted from the Acura to appellant’s fingerprints.

Rebuttal

On rebuttal, Priebe testified that when the trunk of Daly’s Mitsubishi was searched, a pair of gloves was found in the duffel bag with the tools. Priebe said the gloves could be used for mechanic-type work. On cross-examination, Priebe said he was unaware that any items in the car or trunk belonged to appellant. He also said that appellant told him appellant and Pachonian had been playing basketball prior to the traffic stop. However, no basketball was found inside the Mitsubishi. Priebe said that, when he told appellant that a witness would be coming for an in-field line-up, appellant said he hoped the witness would not identify him.

The trial court properly instructed the jury. The jury found appellant guilty of both counts.

The probation department’s presentence report recommended that appellant be placed on three years’ probation and serve a county jail term. The prosecution sought a

two-year state prison term. At the sentencing hearing, the court denied appellant's request to reduce his felony convictions to misdemeanors pursuant to Penal Code section 17, subdivision (b). The court imposed a three-year prison term with execution of sentence suspended, placed appellant on three years' probation with standard conditions, and imposed a 365-day county jail term with 50 days of actual credit for time served. The court imposed a \$200 restitution fine (Pen. Code, § 1202.4), a \$200 parole revocation fine to be stayed unless parole is revoked (Pen. Code, § 1202.45), and a \$20 court security fee (Pen. Code, § 1465.8). The court ordered appellant to make actual restitution to the victim with the amount left open pending a determination by probation. It also ordered appellant to pay the cost of probation after his release from custody in an amount not to exceed \$50 per month. The court also assessed \$500 in attorney fees to be imposed upon a determination of his ability to pay.

Appellant was adequately represented at all stages of the proceedings. We conclude no arguable issues are shown.

DISPOSITION

The judgment is affirmed.

SIMONS, J.

We concur.

JONES, P.J.

BRUINIERS, J.*

* Judge of the Contra Costa Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.